

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

RightCHOICE Managed Care, Inc., *et al.*,

Plaintiffs,

v.

Hospital Partners, Inc.; Hospital Laboratory Partners, LLC; Empower H.I.S. LLC; LifeBrite Laboratories, LLC; RAJ Enterprises of Central Florida, LLC d/b/a Pinnacle Laboratory Services; Labmed Services, LLC; SeroDynamics, LLC; Lucenta Labs, LLC; David Byrns; Jorge Perez; Christian Fletcher; James F. Porter, Jr.; Beau Gertz; and Mark Blake,

Defendants.

CIVIL ACTION NO.
5:18-CV-06037-DGK

**DECLARATION OF NATHANIEL
MOORE IN SUPPORT OF PLAINTIFFS'
BRIEF REGARDING DISCOVERY
DISPUTE WITH DEFENDANTS
HOSPITAL PARTNERS, INC.,
EMPOWER H.I.S., LLC, JORGE PEREZ,
AND DAVID BYRNS**

I, Nathaniel Moore, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an attorney at Robins Kaplan LLP, counsel to Plaintiffs in the above-captioned proceeding.
2. The parties held their Rule 26(f) conference on October 4, 2018.
3. On October 8, 2018, Plaintiffs served discovery requests on Defendants Empower H.I.S. LLC, Hospital Partners, Inc., Jorge Perez, and David Byrns (collectively, the "Empower Defendants").
4. On November 26, 2018, the Empower Defendants served their responses to Plaintiffs' discovery requests.
5. Attached hereto as Exhibit A is a true and correct copy of Empower H.I.S.'s Responses to Plaintiffs' First Set of Interrogatories.

6. Attached hereto as Exhibit B is a true and correct copy of Empower H.I.S.'s Responses to Plaintiffs' First Set of Requests for Production.

7. Attached hereto as Exhibit C is a true and correct copy of Hospital Partners, Inc.'s Responses to Plaintiffs' First Set of Interrogatories.

8. Attached hereto as Exhibit D is a true and correct copy of Hospital Partners, Inc.'s Responses to Plaintiffs' First Set of Requests for Production.

9. Attached hereto as Exhibit E is a true and correct copy of Jorge Perez's Responses to Plaintiffs' First Set of Interrogatories.

10. Attached hereto as Exhibit F is a true and correct copy of Jorge Perez's Responses to Plaintiffs' First Set of Requests for Production.

11. Attached hereto as Exhibit G is a true and correct copy of David Byrns' Responses to Plaintiffs' First Set of Interrogatories.

12. Attached here to as Exhibit H is a true and correct copy of David Byrns' Responses to Plaintiffs' First Set of Requests for Production.

13. Attached hereto as Exhibit I is a true and correct copy of the Empower Defendants' Rule 26(a)(1) Disclosures.

14. In light of the numerous deficiencies in the Empower Defendants' discovery responses, Plaintiffs sent a letter to the Empower Defendants on December 19, 2018 requesting that they cure each deficiency. Attached hereto as Exhibit J is a true and correct copy of Plaintiffs' deficiency letter to the Empower Defendants.

15. On January 7, 2019, counsel for Plaintiffs had a telephonic meet-and-confer with counsel for the Empower Defendants: Frank Smith and Lauren Horsman. During the call, Mr. Smith represented that the Empower Defendants were standing by the objections in their

discovery responses, and would not produce any documents or other information. He also indicated that his clients would possibly be asserting the Fifth Amendment as a basis for not producing documents or other information.

16. Additionally, during the January 7, 2019 call, Mr. Smith indicated that he knew of no document-preservation notice having been provided to Byrns, Perez, or their companies Hospital Partners, Inc. and Empower H.I.S. He further stated that since the filing of this lawsuit, Empower H.I.S. has dissolved. He said that he was unaware of where Empower H.I.S.'s records are today, but that they may be in some "central repository."

17. On January 11, 2019, the Empower Defendants served "amended responses" to Plaintiffs' discovery requests in which they asserted the Fifth Amendment as a purported basis for not producing documents or other information. Attached hereto as Exhibit K is a true and correct copy of the Empower Defendants' "amended responses" to Plaintiffs' Discovery Requests.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in Minneapolis, Minnesota this 21st day of January 2019.

By: /s/ Nathaniel J. Moore
Nathaniel J. Moore

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically with the United States District Court for the Western District of Missouri, through the Court's CM/ECF system, on the 21st day of January 2019, with notice of case activity sent to counsel of record.

/s/ Michael L. Jente